



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

STATEMENT
OF
JAMES K. KALLSTROM
ASSISTANT DIRECTOR IN CHARGE
NEW YORK DIVISION
ON
FEBRUARY 5, 1997
BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE,
AND CONSUMER PROTECTION
COMMITTEE ON COMMERCE
U.S. HOUSE OF REPRESENTATIVES
REGARDING
CELLULAR PRIVACY.



MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE, AND CONSUMER PROTECTION, I WOULD LIKE TO THANK YOU FOR PROVIDING ME WITH THIS OPPORTUNITY TO DISCUSS WITH YOU THE MATTER OF AUTHORIZED AND UNAUTHORIZED INTERCEPTIONS OF COMMUNICATIONS, THE FEDERAL LAWS REGARDING THE INTERCEPTION OF COMMUNICATIONS AND COMMUNICATION INTERCEPTION DEVICES, AND THE MATTER OF SECURITY RELATED TO WIRELESS COMMUNICATIONS.

ALMOST THIRTY (30) YEARS AGO, CONGRESS ENACTED THE FIRST COMPREHENSIVE LEGISLATION WHICH, ON THE ONE HAND, PROTECTS AN INDIVIDUAL'S COMMUNICATIONS PRIVACY, BY MAKING ILLEGAL UNAUTHORIZED COMMUNICATION INTERCEPTIONS, AND WHICH, ON THE OTHER, PROTECTS THE SAFETY OF THE AMERICAN PUBLIC, BY ESTABLISHING A MEANS FOR LAW ENFORCEMENT TO CONDUCT AUTHORIZED COMMUNICATION INTERCEPTIONS, PURSUANT TO COURT ORDER, WHEN SUCH COMMUNICATIONS ARE USED IN FURTHERANCE OF CRIME. THIS LEGISLATION, TITLE III OF THE "OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968," HAS WORKED EXTREMELY WELL IN CAREFULLY BALANCING INDIVIDUAL AND SOCIETAL NEEDS.

TITLE III, AS ORIGINALLY ENACTED, UNDER PROVISIONS CODIFIED AT TITLE 18, UNITED STATES CODE, SECTION 2511, MADE IT ILLEGAL TO INTENTIONALLY CONDUCT UNAUTHORIZED INTERCEPTIONS OF WIRE AND ORAL COMMUNICATIONS. THIS PROHIBITION APPLIES TO PRIVATE PERSONS AND PUBLIC OFFICIALS ALIKE. IT FURTHER MADE ILLEGAL THE INTENTIONAL DISCLOSURE AND USE OF THE CONTENTS OF SUCH ILLEGALLY INTERCEPTED COMMUNICATIONS. VIOLATIONS OF THIS

SECTION ARE PUNISHABLE BY FINES OF UP TO \$250,000, AND A PERIOD OF IMPRISONMENT OF NOT MORE THAN FIVE (5) YEARS. CIVIL CAUSES OF ACTION FOR VICTIMS OF ILLEGAL INTERCEPTIONS ARE ALSO ESTABLISHED, UNDER SECTION 2520. THE PRIVACY ASPECTS OF TITLE III HAVE BEEN UPDATED SINCE 1968 TO COVER CELLULAR COMMUNICATIONS, IN THE ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986 (EPCA), AND TO COVER CORDLESS TELEPHONE COMMUNICATIONS AND RADIO-BASED DATA TRANSMISSIONS, IN THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA) IN 1994.

WITH REGARD TO ATTEMPTING TO PROVIDE COMMUNICATIONS SECURITY, TITLE III PROVISIONS, CODIFIED AT TITLE 18, UNITED STATES CODE, SECTION 2512, PROHIBIT THE MANUFACTURE, DISTRIBUTION, SALE, POSSESSION, AND ADVERTISING OF INTERCEPTION DEVICES WHOSE PRIMARY PURPOSE IS THE SURREPTITIOUS INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. VIOLATIONS OF THIS STATUTE ARE ALSO PUNISHABLE BY A FINE OF UP TO \$250,000 AND A PERIOD OF IMPRISONMENT OF NOT MORE THAN FIVE (5) YEARS. THE PURPOSE OF THIS PROVISION IS TO LIMIT THE AVAILABILITY OF INTERCEPTION DEVICES TO AUTHORIZED LAW ENFORCEMENT ENTITIES AND TO TELECOMMUNICATIONS CARRIERS -- AND TO KEEP THEM OUT OF THE HANDS OF UNAUTHORIZED EAVESDROPPERS.

ASIDE FROM THESE TITLE III FEDERAL CRIMINAL STATUTES THAT PENALIZE THE ILLEGAL INTERCEPTION OF COMMUNICATIONS AND THE

ILLEGAL PURVEYANCE OF COVERT INTERCEPTION DEVICES, THE FCC HAS PROMULGATED REGULATIONS THAT ARE INTENDED TO PREVENT THE MANUFACTURE OF CERTAIN TYPES OF SCANNERS AND DEVICES THAT CAN BE USED TO EFFECT SURREPTITIOUS INTERCEPTIONS WITHIN THE CELLULAR TELEPHONE PORTION OF THE RADIO SPECTRUM. WE DEFER TO THE FCC REGARDING THE DETAILS OF THESE REGULATIONS AND THEIR EFFECTIVENESS IN PREVENTING THE AVAILABILITY OF DEVICES THAT CAN BE USED FOR UNAUTHORIZED, ILLEGAL CELLULAR INTERCEPTIONS.

WITH REGARD TO THE PUBLIC SAFETY NEEDS OF SOCIETY, CONGRESS, IN ENACTING TITLE III, PROPERLY RECOGNIZED THE FACT THAT DANGEROUS CRIMINALS ROUTINELY USE OUR NATION'S TELECOMMUNICATIONS NETWORKS TO CARRY OUT THEIR CRIMINAL ACTIVITIES -- ACTIVITIES WHICH THREATEN THE PERSONAL SAFETY AND ECONOMIC WELL-BEING OF THE INNOCENT, LAW-ABIDING CITIZENS OF OUR NATION. IN ESTABLISHING PROCEDURES FOR AUTHORIZED LAW ENFORCEMENT INTERCEPTIONS OF COMMUNICATIONS IN FEDERAL CRIMINAL INVESTIGATIONS, CONGRESS ENACTED STRICT PROCEDURES FOR OBTAINING AND CONDUCTING SUCH COURT-ORDERED INTERCEPTIONS. OF PARTICULAR NOTE, THESE STATUTES ONLY ALLOW FOR THE USE OF THIS EXTREMELY IMPORTANT AND EFFECTIVE INVESTIGATIVE TECHNIQUE IN INVESTIGATIONS OF THE MOST SERIOUS CRIMES, ONLY WHEN THERE IS PROBABLE CAUSE TO BELIEVE THAT CERTAIN WIRE OR ELECTRONIC COMMUNICATIONS ARE BEING TRANSMITTED OVER SPECIFIC COMMUNICATIONS DEVICES IN THE FURTHERANCE OF SUCH CRIMES, AND ONLY WHERE THE LAW ENFORCEMENT AGENCY SHOWS THAT OTHER INVESTIGATIVE TECHNIQUES HAVE NOT WORKED,

OR WILL NOT WORK, OR ARE TOO DANGEROUS. FURTHER, IN ALL SUCH AUTHORIZED INTERCEPTIONS, LAW ENFORCEMENT OFFICERS ARE REQUIRED BY TITLE III TO CAREFULLY LIMIT, OR "MINIMIZE," ITS MONITORING OF INTERCEPTED COMMUNICATIONS TO ONLY THOSE CONVERSATIONS THAT ARE CRIMINAL IN NATURE.

IN MANY CASES, THERE IS NO SUBSTITUTE FOR COURT-ORDERED INTERCEPTIONS IN GATHERING EVIDENCE, PREVENTING CRIMES, SOLVING CRIMES, AND IN BRINGING THE VIOLENT TO JUSTICE. DURING THE PAST 14 YEARS, THE USE OF AUTHORIZED, COURT-ORDERED INTERCEPTIONS HAS DIRECTLY RESULTED IN THE CONVICTION OF OVER 26,000 DANGEROUS FELONS. SIMILARLY, TITLE III AND FISA-BASED INTERCEPTIONS HAVE MADE, AND CONTINUE TO MAKE, A SIGNIFICANT AND IMPORTANT CONTRIBUTION TO U.S. FOREIGN COUNTERINTELLIGENCE, COUNTER-TERRORISM, AND COUNTER-ESPIONAGE EFFORTS, IN INVESTIGATIONS SUCH AS THE WORLD TRADE CENTER BOMBING AND THE AMES SPY CASE.

FOLLOWING THE CONGRESS' LEAD, SINCE 1968, FORTY-ONE (41) STATES, THE U.S. VIRGIN ISLANDS, AND THE DISTRICT OF COLUMBIA HAVE ENACTED SIMILAR STATUTES WHICH PROTECT COMMUNICATIONS PRIVACY AND WHICH AUTHORIZE THE USE OF COURT-ORDERED COMMUNICATIONS INTERCEPTIONS BY STATE AND LOCAL LAW ENFORCEMENT IN THE INVESTIGATION OF SERIOUS STATE CRIMES IN THOSE JURISDICTIONS.

THE FEDERAL BUREAU OF INVESTIGATION (FBI) HAS EXCLUSIVE INVESTIGATIVE JURISDICTION REGARDING THE COMMUNICATIONS PRIVACY AND ILLEGAL INTERCEPTION DEVICE VIOLATIONS ESTABLISHED IN TITLE III. DURING THE PAST FIVE YEARS, ON AVERAGE, THE FBI HAS CONDUCTED APPROXIMATELY 80 INVESTIGATIONS PER YEAR CONCERNING 'ALLEGATIONS OF UNAUTHORIZED OR ILLEGAL INTERCEPTIONS OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. UNFORTUNATELY, THE FBI DOES NOT COMPILE STATISTICS REGARDING THE NUMBER OF ILLEGAL INTERCEPTIONS BEING DIRECTED AT WIRELESS AS COMPARED TO WIRELINE TELECOMMUNICATIONS SUBSCRIBERS. JUSTICE DEPARTMENT STATISTICS SHOW THAT IN THE LAST FIVE YEARS ALMOST 100 CASES HAVE BEEN PROSECUTED CHARGING VIOLATIONS OF 18 U.S.C. SECTION 2511.

GIVEN THAT THE FBI IS A LAW ENFORCEMENT INVESTIGATIVE AGENCY, AND NOT A REGULATORY AGENCY, WE ARE NOT IN THE BEST POSITION TO COMMENT ON THE SECURITY OF CURRENT AND FUTURE WIRELESS TELECOMMUNICATIONS SYSTEMS. SUCH COMMENTS ARE BEST ADDRESSED BY TELECOMMUNICATIONS EQUIPMENT MANUFACTURERS, INDIVIDUAL WIRELESS TELECOMMUNICATIONS CARRIERS, AND BY THE FEDERAL COMMUNICATIONS COMMISSION (FCC). HOWEVER, WE ARE AWARE OF THE FACT THAT THERE ARE CERTAIN PRIVACY AND SECURITY WLNERABILITIES IN THE AREA OF WIRELESS, RADIO-BASED PORTIONS OF TELECOMMUNICATIONS NETWORKS. ON THE OTHER HAND, WE ARE ALSO AWARE THAT THERE ARE A NUMBER OF SECURITY AND PRIVACY-ENHANCING TECHNOLOGIES THAT CAN BE USED, AND ARE BEING USED BY SOME WIRELESS CARRIERS, TO PROTECT THEIR SUBSCRIBERS' COMMUNICATIONS

FROM UNAUTHORIZED, ILLEGAL INTERCEPTIONS. FOR EXAMPLE, DIGITAL-BASED TRANSMISSIONS, FREQUENCY-HOPPING AND SPREAD-SPECTRUM TECHNIQUES, AND THE SCRAMBLING OR ENCRYPTING OF THE RADIO PORTION OF WIRELESS COMMUNICATIONS HELP TO PROTECT SUBSCRIBERS' WIRELESS COMMUNICATIONS AGAINST SUCH UNAUTHORIZED AND ILLEGAL INTERCEPTIONS. THESE SECURITY PROTECTIONS CAN BE APPLIED TO CELLULAR, CORDLESS, AND PERSONAL COMMUNICATIONS SERVICES (PCS) TELEPHONES. THE SUBCOMMITTEE SHOULD UNDERSTAND THAT, AS A GENERAL PROPOSITION, LAW ENFORCEMENT AGENCIES DO NOT NORMALLY EFFECT COURT-ORDERED INTERCEPTIONS THROUGH RADIO-FREQUENCY-BASED TECHNIQUES. RATHER, LAW ENFORCEMENT AGENCIES WORK DIRECTLY WITH TELECOMMUNICATIONS CARRIERS TO EFFECT COURT-ORDERED INTERCEPTIONS, IN A SECURE AND SURGICAL FASHION, WITHIN THE SWITCHING FACILITIES OF THE WIRELESS CARRIERS.

IT IS UNFORTUNATE THAT THERE ARE A NUMBER OF PUBLICATIONS, TRADE MAGAZINES, AND SITES ON THE INTERNET WHERE INFORMATION IS AVAILABLE CONCERNING TECHNIQUES AND DEVICES FOR CONDUCTING UNAUTHORIZED, ILLEGAL INTERCEPTIONS. "CELLULAR HACKER" INFORMATION AND RELATED PRODUCT INFORMATION CAN BE FOUND IN ABUNDANCE ON THE INTERNET. AGAIN, PRIVACY AND SECURITY ARE PUT AT RISK WHEN THIS INFORMATION IS DIRECTED TO THE GENERAL PUBLIC, AS OPPOSED TO AUTHORIZED LAW ENFORCEMENT AGENCIES AND TELECOMMUNICATIONS CARRIERS.

AS PREVIOUSLY STATED, WITH REGARD TO AUTHORIZED, COURT-ORDERED COMMUNICATIONS INTERCEPTIONS, LAW ENFORCEMENT HAS HISTORICALLY WORKED CLOSELY WITH TELECOMMUNICATIONS CARRIERS TO MAKE SURE THAT SUBSCRIBER PRIVACY AND NETWORK SECURITY ARE EFFECTIVELY ADDRESSED. SECTION 2518(4) OF TITLE 18, UNITED STATES CODE, REQUIRES WIRE AND ELECTRONIC COMMUNICATIONS SERVICE PROVIDERS TO FURNISH LAW ENFORCEMENT WITH THE TECHNICAL ASSISTANCE NECESSARY TO ACCOMPLISH AUTHORIZED, COURT-ORDERED COMMUNICATIONS INTERCEPTIONS. UNFORTUNATELY, RECENT AND CONTINUING ADVANCES IN TELECOMMUNICATIONS SYSTEMS, NETWORKS, SERVICES, AND FEATURES HAVE MADE IT MORE DIFFICULT, IF NOT IMPOSSIBLE, FOR LAW ENFORCEMENT TO CONDUCTED AUTHORIZED, COURT-ORDERED INTERCEPTIONS, BOTH IN TERMS OF LAW ENFORCEMENT'S AND A TELECOMMUNICATIONS CARRIER'S ABILITY TO OBTAIN ALL OF THE CALL CONTENT AND ALL OF THE CALL-IDENTIFYING INFORMATION THAT ARE AUTHORIZED TO BE INTERCEPTED.

IN OCTOBER OF 1994, CONGRESS AGAIN TOOK ACTION TO PROTECT THE PUBLIC SAFETY AND NATIONAL SECURITY BY ENACTING THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (CALEA). THE PURPOSE OF CALEA IS TO CLARIFY THE EXISTING OBLIGATION OF TELECOMMUNICATIONS CARRIERS TO ASSIST LAW ENFORCEMENT IN CARRYING OUT AUTHORIZED, COURT-ORDERED INTERCEPTIONS, IN A SECURE FASHION, BY SETTING FORTH IN LAW THE REQUIRED INTERCEPTION CAPABILITIES AND CAPACITIES THAT TELECOMMUNICATIONS CARRIERS NEED TO ESTABLISH AND MAINTAIN WITHIN THEIR NETWORKS TO ASSIST LAW ENFORCEMENT.

THE FBI HAS BEEN WORKING CLOSELY WITH THE TELECOMMUNICATIONS INDUSTRY IN DEVELOPING MORE DETAILED TECHNICAL STANDARDS AND REQUIREMENTS TO IMPLEMENT THE PROVISIONS OF CALEA. IN ADDITION, WE UNDERSTAND THAT THE FCC WILL SOON BE OFFERING FOR COMMENT, PURSUANT TO SECTION 105 OF CALEA, ITS PROPOSED REGULATIONS FOR NETWORK SECURITY AND INTEGRITY WITH REGARD TO AUTHORIZED, COURT-ORDERED COMMUNICATIONS INTERCEPTIONS.

IT IS IMPORTANT TO NOTE THAT, IN THE MAIN, THE SOLUTIONS BEING CONSIDERED BY LAW ENFORCEMENT AND THE TELECOMMUNICATIONS INDUSTRY REGARDING THE IMPLEMENTATION OF CALEA ARE CHIEFLY LOCATED WITHIN THE CARRIERS' SWITCHING FACILITIES. THESE SOLUTIONS TO THE CURRENT TECHNOLOGICAL IMPEDIMENTS TO AUTHORIZED, COURT-ORDERED INTERCEPTIONS ARE NOT RELATED TO, AND DO NOT INVOLVE, INTERCEPTIONS WITHIN THE RADIO PORTION OF WIRELESS COMMUNICATIONS NETWORKS. THUS, THE SECURITY AND PRIVACY-ENHANCING MEASURES AND TECHNOLOGIES THAT I PREVIOUSLY ALLUDED TO ARE NOT IMPACTED OR AFFECTED BY THE CALEA PROCESS.

MR. CHAIRMAN, AT THIS TIME I WILL BE HAPPY TO ANSWER ANY QUESTION YOU AND THE MEMBERS OF THE SUBCOMMITTEE MAY HAVE.